

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Plaintiff,
vs.

BCP CONSTRUCTION OF HAWAII,
INC., *et al.*,

Defendants.

Case No. 19-cv-00140-DKW-WRP

**ORDER DIRECTING ENTRY OF
JUDGMENT**

On December 10, 2019, this Court granted in part Plaintiff Travelers Casualty and Surety Company of America's ("Travelers") motion for partial summary judgment. Dkt. No. 60. More specifically, the Court found that Travelers was entitled to summary judgment with respect to its breach of contract claim and damages in connection with that claim. The Court further found that Travelers could be entitled to the remedy of specific performance, pursuant to its contractual agreement with Defendants, Robert Close and Betty Close, both individually and as trustees of the Close Family Trust, BCP Construction of Hawaii, Inc., and Legacy One Development, LLC (collectively, "Defendants"). Nonetheless, the Court delayed ruling on that remedy, pending clarification on various matters identified in the December 10, 2019 Order.

On January 10, 2020, Travelers filed a supplemental brief in support of its motion for partial summary judgment, Dkt. No. 62, clarifying the matters identified by the Court. Having reviewed the foregoing supplemental brief and the declaration and exhibits attached thereto, the Court now finds that Travelers is entitled to specific performance. Accordingly, in light of the findings in the December 10, 2019 Order and herein, the Court orders as follows:

1. Defendants, jointly and severally, shall pay Travelers the sum of **\$2,749,910.96** as actual damages resulting from Defendants' breach of the General Indemnity Agreement through and including September 17, 2019.
2. Pursuant to Section 5 of the General Indemnity Agreement, Travelers is entitled to specific performance of said provision such that Defendants, jointly and severally, shall deposit with Travelers the amount of **\$5,294,972.92** as anticipated losses resulting from the breach of the General Indemnity Agreement ("the Collateral"). To the extent the Collateral is deposited with Travelers and subsequently not used, after resolution of Travelers' liability in connection with the bonds issued on behalf of BCP Construction of Hawaii, Inc., Travelers shall return any unused Collateral to Defendants.

3. Claims Two through Five of the Complaint are DISMISSED.
4. Travelers may seek to recover its attorneys' fees, costs, expenses, and prejudgment interest in an amount to be determined following resolution of a timely post-judgment motion.

The Clerk is instructed to enter Judgment following entry of this Order, and then CLOSE this case.

IT IS SO ORDERED.

DATED: January 29, 2020 at Honolulu, Hawai‘i.



Derrick K. Watson
United States District Judge

Travelers Casualty and Surety Company of America v. BCP Construction of Hawaii, Inc., et al; Civil No. 19-00140 DKW-WRP; ORDER DIRECTING ENTRY OF JUDGMENT